

AMENDED IN SENATE AUGUST 17, 2015

AMENDED IN SENATE JUNE 23, 2015

AMENDED IN SENATE MAY 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 689

Introduced by Assembly Member Dodd

February 25, 2015

An act to amend Section 27581.4 of, and to add Sections 27561.5, 27581.1, 27583, 27583.2, 27583.4, 27584, and 27585 to, the Food and Agricultural Code, relating to eggs.

LEGISLATIVE COUNSEL’S DIGEST

AB 689, as amended, Dodd. Marketing of eggs: violations: administrative and civil penalties.

Existing law establishes a regulatory scheme for the marketing of shell eggs, and requires egg producers and egg handlers to register with the Secretary of Food and Agriculture. A violation of those provisions or regulations adopted pursuant to those provisions is unlawful, and for certain violations, punishable as a misdemeanor. Existing law also authorizes the secretary, in lieu of seeking prosecution for the violation, to bring a civil action for up to \$1,000 for the violation.

This bill would authorize the department to refuse to issue, or to suspend or revoke, an egg handler or egg producer certificate of registration under certain circumstances and would require the department to adopt regulations to establish procedures for an appeals process to contest the refusal to issue a certificate of registration or the department’s suspension or revocation of a certificate of registration. The bill would increase the civil penalty amount to \$10,000 and would

also authorize a county agricultural commissioner to bring a civil action. The bill would also authorize the secretary or a county agricultural commissioner, in lieu of prosecution, to levy an administrative penalty of up to \$10,000 for a violation of those provisions. The bill would require the secretary, on or before January 1, 2017, to adopt regulations classifying violations of these egg provisions as either “minor,” “moderate,” or “serious,” with different penalty ranges applicable to each classification, as specified, and would apply these amounts to both civil penalties and administrative penalties. The bill would set forth notice and other procedural requirements for bringing and resolving an administrative action pursuant to those provisions, and would require the funds recovered by the county agricultural commissioner to be deposited in the county’s general fund, and funds collected by the secretary to be deposited into the Department of Food and Agriculture Fund for use by the department in administering these provisions, when appropriated to the department for that purpose.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 27561.5 is added to the Food and
- 2 Agricultural Code, to read:
- 3 27561.5. (a) The department may refuse to issue, or may
- 4 suspend or revoke, a certificate of registration if either of the
- 5 following occur:
- 6 (1) The applicant fails to pay in full by the due date a fine, fee,
- 7 assessment, or penalty levied by the department for a violation of
- 8 this chapter, including a violation that occurred before January 1,
- 9 2016.
- 10 (2) The applicant has violated a provision of this chapter or any
- 11 regulation adopted to implement this chapter.
- 12 (b) The department may reverse its refusal to issue or its
- 13 suspension or revocation of a certificate of registration if the
- 14 department finds substantial grounds to do so.
- 15 (c) (1) The department shall adopt regulations that do both of
- 16 the following:
- 17 (A) Establish procedures for an appeals process, including a
- 18 noticed hearing, for a person who wishes to contest the
- 19 department’s refusal to issue a certificate of registration or the

1 department's suspension or revocation of a certificate of
2 registration.

3 (B) Specify the maximum time period following the refusal to
4 issue, suspension, or revocation of a certificate of registration
5 during which the applicant shall not reapply for another egg handler
6 or egg producer certificate of registration. The time period shall
7 be based on the severity or number of violations of this chapter,
8 and shall not exceed three years from the date of the original refusal
9 to issue, suspension, or revocation of the certificate of registration.

10 (2) Regulations adopted pursuant to this section shall not be
11 subject to Chapter 3.5 (commencing with Section 11340) of Part
12 1 of Division 3 of Title 2 of the Government Code.

13 SEC. 2. Section 27581.1 is added to the Food and Agricultural
14 Code, to read:

15 27581.1. (a) On or before January 1, 2017, the secretary shall
16 adopt regulations classifying violations of this chapter, or any
17 regulation adopted pursuant to this chapter, as "minor," subject to
18 a penalty from fifty dollars (\$50) to four hundred dollars (\$400),
19 inclusive, "moderate," subject to a penalty from four hundred one
20 dollars (\$401) to one thousand dollars (\$1,000), inclusive, or
21 "serious," subject to a penalty from one thousand one dollars
22 (\$1,001) to ten thousand dollars (\$10,000), inclusive.

23 (b) The penalty schedule described in this section shall apply
24 to civil penalties imposed pursuant to Section 27581.4 and
25 administrative penalties imposed pursuant to Section 27583.

26 (c) The department shall post on its Internet Web site when the
27 penalty schedule described in this section has been adopted.

28 SEC. 3. Section 27581.4 of the Food and Agricultural Code is
29 amended to read:

30 27581.4. (a) The secretary, or a commissioner for violations
31 in his or her county, may bring a civil action against any person
32 who violates this chapter or any regulation adopted pursuant to
33 this chapter, and any person who commits that violation is liable
34 civilly in an amount not to exceed ten thousand dollars (\$10,000).
35 The court shall set the civil penalty imposed for a violation of this
36 chapter, or any regulation adopted pursuant to this chapter, in
37 accordance with the penalty schedule adopted by the secretary
38 pursuant to Section 27581.1.

39 (b) Any money recovered by the secretary under this section
40 shall be deposited in the Department of Food and Agriculture Fund

1 for use by the department in administering this chapter, when
2 appropriated to the department for that purpose.

3 (c) Any money recovered by a commissioner under this section
4 shall be deposited in the county's general fund.

5 SEC. 4. Section 27583 is added to the Food and Agricultural
6 Code, to read:

7 27583. (a) In lieu of prosecution, the secretary or the
8 commissioner may levy an administrative penalty, in an amount
9 not to exceed ten thousand dollars (\$10,000) and in accordance
10 with Section 27583.2 or ~~Section~~ 27583.4, as applicable, against a
11 person who violates this chapter or any regulation implemented
12 pursuant to this chapter. Commencing on the date the department
13 posts notice of the adoption of the penalty schedule described in
14 Section 27581.1, a penalty levied pursuant to this section shall be
15 in accordance with that schedule.

16 (b) "Person," as used in this section, means anyone engaged in
17 the business of producing, candling, grading, packing, or otherwise
18 preparing shell eggs for market or who engages in the operation
19 of selling or marketing eggs that he or she has produced, purchased,
20 or acquired from a producer, or which he or she is marketing on
21 behalf of a producer, whether as owner, agent, employee, or
22 otherwise pursuant to this chapter.

23 SEC. 5. Section 27583.2 is added to the Food and Agricultural
24 Code, to read:

25 27583.2. If the secretary levies an administrative penalty
26 pursuant to Section 27583, the following shall apply:

27 (a) The person charged with the violation shall be notified of
28 the proposed action in accordance with subdivision (b). The notice
29 shall include the nature of the violation, the amount of the proposed
30 administrative penalty, and the right to request a hearing to appeal
31 the administrative action.

32 (b) (1) Notice shall be sent by certified mail to one of the
33 following:

34 (A) The address of the person charged, as provided by any
35 license or registration issued by the department, which is not
36 limited to a certificate of registration issued pursuant to this
37 chapter.

38 (B) The address of an agent for service of process for the person
39 charged, as filed with the Secretary of State.

1 (C) If an address described in subparagraph (A) or (B) is not
2 available, the last known address of the person charged.

3 (2) Notice that is sent to any of the addresses described in
4 paragraph (1) shall be considered received, even if delivery is
5 refused or if the notice is not accepted at that address.

6 (3) The person charged shall have the right to appeal the
7 proposed action by requesting a hearing within 20 days of the
8 issuance of the notice of the proposed action.

9 (c) If a hearing is requested, the secretary shall schedule a
10 hearing within 45 days of the request, with notice of the time and
11 place of the hearing given at least 10 days before the date of the
12 hearing. At the hearing, the person charged shall be given an
13 opportunity to review the secretary's evidence and to present
14 evidence on his or her own behalf. If a hearing is not timely
15 requested, the secretary may take the proposed action without a
16 hearing.

17 (d) The secretary shall issue a decision within 30 days of the
18 conclusion of the hearing, which shall become effective
19 immediately.

20 (e) The secretary shall send a copy of the notice of the proposed
21 action to the commissioner of the county in which the violation
22 took place at the same time notice is sent pursuant to subdivision
23 (b). Additionally, the secretary shall inform the commissioner of
24 the county in which the action was initiated of violations for which
25 a penalty has been assessed.

26 (f) If the proposed action is not overturned, in addition to the
27 levy of an administrative penalty, the secretary may recover from
28 the person charged any other reasonable costs incurred by the
29 department in connection with administering the hearing to appeal
30 the proposed action.

31 (g) Revenues collected by the secretary pursuant to this section
32 shall be deposited into the Department of Food and Agriculture
33 Fund for use by the department in administering this chapter, when
34 appropriated to the department for that purpose.

35 SEC. 6. Section 27583.4 is added to the Food and Agricultural
36 Code, to read:

37 27583.4. If a commissioner levies an administrative penalty
38 pursuant to Section 27583, the following shall apply:

39 (a) (1) Before an administrative penalty is levied, the person
40 charged with the violation shall receive written notice of the

1 proposed action in accordance with paragraph (2). The notice shall
2 include the nature of the violation, the amount of the proposed
3 penalty, and the right to request a hearing to appeal the
4 administrative action. ~~The person shall have the right to request a~~
5 ~~hearing within 20 days after receiving notice of the proposed~~
6 ~~action.~~

7 (2) (A) Notice shall be sent by certified mail to one of the
8 following:

9 (i) The address of the person charged, as provided by any license
10 or registration issued by the department, which is not limited to a
11 certificate of registration issued pursuant to this chapter.

12 (ii) The address of an agent for service of process for the person
13 charged, as filed with the Secretary of State.

14 (iii) If an address described in clause (i) or (ii) is not available,
15 the last known address of the person charged.

16 (B) Notice that is sent to any of the addresses described in
17 subparagraph (A) shall be considered received, even if delivery is
18 refused or if the notice is not accepted at that address.

19 (C) The person charged shall have the right to appeal the
20 proposed action by requesting a hearing within 20 days of the
21 issuance of the notice of the proposed action.

22 (3) If a hearing is requested, the commissioner shall schedule
23 a hearing within 45 days of the request, with notice of the time
24 and place of the hearing given at least 10 days before the date of
25 the hearing. At the hearing, the person charged shall be given an
26 opportunity to review the commissioner's evidence and to present
27 evidence on his or her own behalf. If a hearing is not timely
28 requested, the commissioner may take the proposed action without
29 a hearing. If the person charged, or his or her legal representative,
30 fails to appear, the commissioner shall prevail in the proceedings.

31 (4) The commissioner shall issue a decision within 30 days of
32 the conclusion of the hearing, which shall become effective
33 immediately.

34 (5) The commissioner shall send a copy of the notice of the
35 proposed action to the secretary at the same time notice is sent to
36 the person charged with the violation.

37 (b) If the person, upon whom the commissioner levied an
38 administrative penalty, requested and appeared at a hearing, the
39 person may appeal the commissioner's decision to the secretary
40 within 30 days of the date of receiving a copy of the

1 commissioner's decision. The following procedures apply to the
2 appeal:

3 (1) The appeal shall be in writing and signed by the appellant
4 or his or her authorized agent, state the grounds for the appeal, and
5 include a copy of the commissioner's decision. The appellant shall
6 file a copy of the appeal with the commissioner at the same time
7 it is filed with the secretary.

8 (2) The appellant and the commissioner, at the time of filing
9 the appeal, within 10 days thereafter, or at a later time prescribed
10 by the secretary, may present the record of the hearing and a written
11 argument to the secretary stating the ground for affirming,
12 modifying, or reversing the commissioner's decision.

13 (3) The secretary may grant oral arguments upon application
14 made at the time written arguments are filed.

15 (4) If an application to present an oral argument is granted,
16 written notice of the time and place for the oral argument shall be
17 given at least 10 days before the date set for oral argument. The
18 times may be altered by mutual agreement of the appellant, the
19 commissioner, and the secretary.

20 (5) The secretary shall decide the appeal on the record of the
21 hearing, including the written evidence and the written argument
22 described in paragraph (2), that he or she has received. If the
23 secretary finds substantial evidence in the record to support the
24 commissioner's decision, the secretary shall affirm the decision.

25 (6) The secretary shall render a written decision within 45 days
26 of the date of appeal or within 15 days of the date of oral arguments
27 or as soon thereafter as practical.

28 (7) On an appeal pursuant to this section, the secretary may
29 affirm the commissioner's decision, modify the commissioner's
30 decision by reducing or increasing the amount of the penalty levied
31 so that it is consistent with the penalty schedule described in
32 Section 27581.1, or reverse the commissioner's decision. An
33 administrative penalty increased by the secretary shall not be higher
34 than that proposed in the commissioner's notice of proposed action
35 given pursuant to subdivision (a). A copy of the secretary's
36 decision shall be delivered or mailed to the appellant and the
37 commissioner.

38 (8) Any person who does not request a hearing with the
39 commissioner pursuant to an administrative penalty assessed under

1 subdivision (a) shall not file an appeal to the secretary pursuant to
2 this subdivision.

3 (c) If the proposed action is not overturned, in addition to the
4 levy of an administrative penalty, the commissioner may recover
5 from the person charged any other reasonable costs incurred by
6 the commissioner in connection with administering the hearing to
7 appeal the proposed action.

8 (d) Revenues from administrative penalties levied by the
9 commissioner shall be deposited in the general fund of the county
10 and, upon appropriation by the board of supervisors, shall be used
11 by the commissioner to carry out his or her responsibilities under
12 this chapter. The commissioner shall inform the secretary of any
13 violations for which a penalty has been assessed.

14 SEC. 7. Section 27584 is added to the Food and Agricultural
15 Code, to read:

16 27584. If a respondent in an administrative action agrees to
17 stipulate to the notice of proposed action, a signed stipulation with
18 the payment of the proposed administrative penalty shall be
19 returned to the commissioner or secretary, as applicable, within
20 45 days of the postmark of the notice of the proposed action. If
21 the stipulation and payment of the proposed administrative penalty
22 are not received within 45 days, the commissioner or the secretary
23 may file a certified copy of a final decision that directs the payment
24 of an administrative penalty with the clerk of the superior court of
25 any county. ~~Judgment~~ *Judgment* shall be entered immediately by
26 the clerk in conformity with the decision. ~~No Pursuant to Section~~
27 *6103 of the Government Code, no fees shall be charged by the*
28 clerk of the superior court for the performance of any official
29 service required in connection with the entry of judgment pursuant
30 to this section.

31 SEC. 8. Section 27585 is added to the Food and Agricultural
32 Code, to read:

33 27585. After the exhaustion of the appeal and review of
34 procedures provided in this article, the secretary or commissioner,
35 or his or her representative, may file a certified copy of a final
36 decision that directs the payment of an administrative penalty, and,
37 if applicable, a copy of any decision of the secretary, or his or her
38 authorized representative, and a copy of any order that denies a
39 petition for a writ of administrative mandamus, with the clerk of
40 the superior court of any county. Judgment shall be entered

1 immediately by the clerk in conformity with the decision or order.
2 ~~No~~ Pursuant to Section 6103 of the Government Code, no fees
3 shall be charged by the clerk of the superior court for the
4 performance of any official service required in connection with
5 the entry of judgment pursuant to this section.

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